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Supreme Court of the United States.

October Term, 1899.

CLARENCE W. HOBBS ET AL.,
Petitioners,

vs.

FRED H. BEACH,
Respondent.

Petition for Writ of Certiorari.

SAMUEL T. FISHER,
Solicitor for Petitioners.

EDWARD S. BEACH,
Of Counsel.

McGILL & WALLACE, Law Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

CLARENCE W. HOBBS *et al.*, Petitioners,

vs.

FRED H. BEACH, Respondent.

NOTICE OF PETITION.

To FRED H. BEACH, the above named respondent.

Please take notice that on October 9, 1899, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, a petition for a *writ of certiorari* will be submitted to the Supreme Court of the United States, at the City of Washington, D. C., for the decision of the Court thereon.

In support of said petition a brief will also be presented to the Court. A copy of the petition and of the brief are herewith served upon you.

Respectfully,

SAMUEL T. FISHER,
Attorney and Counsel for Petitioners.

WASHINGTON, D. C., *September* 23, 1899.

Due service of the foregoing notice of motion in the above cause is hereby admitted this day of , 1899.

Respondent.

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PETITION.

To the Supreme Court of the United States:

The petition of Clarence W. Hobbs and of George A. Craig and Isaac L. Prouty, as executors of the last will and testament of Richard Sugden, deceased, said Sugden being one of the defendants named in the bill of complaint, for a *writ of certiorari*, directing the case of Fred H. Beach, Complainant, Appellant, *v.* Clarence W. Hobbs *et al.*, Defendants, Appellees, No. 246, in the United States Circuit Court of Appeals for the First Circuit, and Clarence W. Hobbs *et al.*, Defendants, Appellants, *v.* Fred H. Beach, Complainant, Appellee, No. 247, pending in said United States Court of Appeals, the same being cross-appeals from the decision of the Circuit Court of the United States for the District of Massachusetts in the suit of said Fred H. Beach, Complainant, against said Clarence W. Hobbs and others, reported in 82 Fed. Rep., 916, to be certified to the Supreme Court of the United States for its determination.

The said petitioners respectfully show to this Court as follows:

First. Your petitioners, at the time of the filing of the bill of complaint against them on May 3, 1892, in said Circuit Court of the United States, and for some time prior to that time and continuously thereafter up to the issuance of the injunction ordered by said Circuit Court of the United States, were engaged at Worcester, Massachusetts, in the manufacture and sale of box-stay machines under United States letters-patent No. 442,582, granted to J. A. Horton, December 9, 1890, on application filed March 28, 1890.

See Certified Record, page 375.

Your petitioners had, at great expense, built up a profitable business in the manufacture of said patented machines at said Worcester, and in the sale and other disposition thereof in various places within the States embraced in the First and Second Judicial Circuits of the United States, and in various other places without said First and Second Circuits, and within the United States of America and the Territories thereof.

Many of said machines so manufactured by petitioners are now in use or ready for use in various places within said First and Second Circuits, being owned or possessed by customers of petitioners who, up to the issuance of the injunction against petitioners ordered by said Circuit Court of the United States, were continuously engaged in the said manufacture and sale, or other disposition, of said machines wherever customers therefor could be found, and who are now possessors of expensive and adequate machinery for the manufacture and sale of box-stay machines made under said Horton patent.

Second. Said suit against petitioners in the Circuit Court of the United States for the District of Massachusetts was brought for alleged infringement of the first, second, third, and sixth claims of reissue letters-patent of the United States, No. 11,167, granted to said Fred H. Beach on May 26, 1891, for an Improvement in Machines for Attaching Stays to the Corners of Boxes, the reissue application wherefor was filed April 9, 1891. Said Beach's original patent was 447,225, and was granted February 24, 1891, on an application filed June 10, 1885.

See Certified Record, p. 607, for Beach Reissue.
See Certified Record, p. 617, for Beach Original.

Third. Said Horton patent No. 442,582 was granted on said December 9, 1890 (that is, two months and fifteen

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days before said Beach's original patent was granted), and without the declaration of any interference by the Commissioner of Patents between the contemporaneously pending said applications of said Horton and Beach, as appears from the file wrapper and contents of Beach's original and reissue applications.

See Certified Record, p. 241, for file wrapper and contents of Beach's original patent, and page 278 for file wrapper and contents of Beach's reissue application.

Fourth. Petitioners aver that owing to limitations imposed by the Commissioner of Patents upon Beach's claims there was no interference in fact or in law between the said pending applications of Beach and Horton.

Fifth. Said complainant, Beach, testified in said suit in the Circuit Court of the United States for the District of Massachusetts as follows, respecting his said original and reissue patents:

"Cross-Int. 54. Do you think that any person skilled in the art of making paper-box machinery would have any substantial difficulty in fully understanding the machine set forth in your original patent, No. 447,225, from the drawings and specification thereof?

"Ans. I do not.

"Cross-Int. 55. The construction and operation of your patented machine and the nature of your invention, and all the features thereof, were set forth in your original patent, No. 447,225, with substantial accuracy, were they not?

"Ans. I supposed they were.

"Cross-Int. 56. And you still think so?

"Ans. I still think so.

"Cross-examination closed.

Redirect examination by MR. DANE.

"Redirect Int. 57 (58). What principal defect caused you to reissue the patent upon which this suit is based?
"Ans. An error in the drawings.
"Redirect Int. 59. Who made the error?
"Ans. The draftsman who inked the drawings.
"Redirect Int. 60. Was it not an obvious error?
"Ans. It was."

Sixth. Prior to said decision of the Circuit Court of the United States for the District of Massachusetts, it was held by his honor, Judge Coxe, in Beach *v.* American Box Machine Company and Horace Inman and others, 63 Fed. Rep., 597, and wherein it appears (63 Fed. Rep., 604) that "infringement of the first three claims is, practically, conceded," that (p. 603) there was "no proof of infringement by the American Box Machine Company;" that the alleged infringement was committed by Inman and his co-partners; that (p. 604) the machine held as an infringement was "a copy of the Beach machine" and infringed the 1st, 2d, 3d, 4th, 5th and 7th claims of the Beach patent; and (p. 602) that said Inman was the "active defendant" and had been defeated by Beach in interference proceedings involving Beach's said original application and an application of Inman. See also Beach *v.* Inman, 75 Fed. Rep., p. 842, Coxe, J., wherein the attitude of the Court towards Inman appears in the following language: "A defendant who has been pronounced in the wrong at every stage of a litigation extending over a period of eight years should be satisfied. He should stop. When he persists in producing the old article by using a machine which concededly contains all the elements of the forbidden combination, save one, the court should not be overzealous to strain the rules of equity in his behalf. The presumptions are all against him. The motion [for a preliminary injunction] is granted."

The Certified Record, pp. 258, 259, and 260, shows declarations of interference between applications of one Jaeger and of said Inman with the original Beach application, and petitioners aver that the Jaeger machine which said Inman was enjoined from making, using, and selling, by his honor Judge Coxe, in 63 Fed. Rep., 597, was substantially identical with the Jaeger machine involved in said Jaeger-Beach interference.

Seventh. On appeal from said decision of Judge Coxe, on pleadings and proofs (63 Fed. Rep., 597), Inman Manufacturing Co. *v.* Beach, 18 C. C. A., 169, the Court of Appeals for the Second Circuit, held:

"The first three claims are broad ones, covering the particular combination referred to *without any restriction* to the details of mechanical construction, and *defendants concede* that, if these claims are to be sustained broadly as they are expressed they are infringed. As to the first set [claims 1, 2, and 3], therefore, the only question is whether, in view of the state of the art, Beach was entitled to appropriate as broad a combination as he has set forth in his first three claims, *which cover every device* for affixing stay strips to the outside of box corners when the operation is performed by the combined action of a feeding mechanism, a cutting mechanism and a pasting mechanism, in combination with any opposing clamping dies whose faces diverge * * * . The patentee indisputably made a machine which did work that heretofore was always done by hand."

Eighth. Your petitioners were sued for the alleged infringement of the first, second, third, and sixth claims of the Beach reissue, which are as follows:

"1. The combination, with opposing clamping-dies having diverging working-faces, of a feeding mechanism constructed to deliver stay-strips between said clamping-dies, and a pasting mechanism for rendering adhesive the stay-strips, said clamping-dies being constructed

to co-operate in pressing upon interposed box-corners the adhesive stay-strips, substantially as described.

"2. The combination, with opposing clamping-dies having diverging working-faces, said clamping-dies being arranged to co-operate in pressing adhesive fastening-strips upon interposed box-corners, a feeding mechanism constructed to feed forward a continuous fastening-strip, and a cutter for severing the said continuous strip into stay-strips of suitable lengths, substantially as described.

"3. The combination, with opposing clamping-dies having diverging working-faces, said clamping-dies being arranged to co-operate in pressing an adhesive fastening-strip upon the corner of an interposed box, a feeding mechanism constructed to feed between the dies a continuous fastening-strip, a pasting mechanism for applying adhesive substance to the strip, and a cutter for severing the strip into stay-strips of suitable lengths, substantially as described.

"6. The combination of opposing clamping-dies having diverging working-faces constructed to co-operate in pressing an adhesive stay-strip upon an interposed box-corner, one of said clamping-dies being constructed to act with an elastic or yielding pressure to enable the dies to operate upon box-corners of different thicknesses, substantially as described."

Ninth. On August 23, 1897, his honor, Judge Putnam, rendered the decision reported in petitioners' case, Beach *v.* Hobbs *et al.*, 82 Fed. Rep., 916, wherein the Court held (82 Fed. Rep., 923), that the "broad statement" [of the Court of Appeals for the Second Circuit, that the first three claims of the Beach reissue covered "every device for affixing stay-strips to the outside of the box-corners, where the operation is performed by the compound action of a feeding machanism, a cutting mechanism, and a pasting mechanism in combination with any opposing clamping-dies whose faces diverge"] "goes beyond what the case demanded, and must be regarded

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as a dictum which we are not required to follow;" and also held (82 Fed. Rep., 926, 927), that Beach's first three claims were limited to the recited mechanisms, each substantially as described in his specification, because it appeared from defendant's exhibit of the file wrapper and contents of Beach's original patent that—

"The Commissioner of Patents by his communication of December 26th, 1890, required that the words, substantially as described, should be used to limit the word mechanism in each claim wherein the word mechanism occurred; but complainant replied, December 31, 1890, that this was unnecessary, because, as he stated, it is perfectly clear that the words substantially as described found at the end of each claim refer to each and every part mentioned in the claim."

And petitioners represent that the record now sought to be brought up to this Court does show it to be a fact that Beach was refused his first three claims except on the condition that he should insert the words "substantially as described" after each of the elemental mechanisms recited in each of the first three claims, because it was held by the Commissioner of Patents that said claims would be otherwise non-patentable in view of the prior art; and after the communication of December 26, 1890, the claims were allowed by the Commissioner on Beach's statement that the words "substantially as described" were to be understood as appearing after each of the recited elemental mechanisms, to wit, after the "feeding mechanism," the "cutting mechanism," and the "pasting mechanism."

See Certified Record, pp. 271–274 for Office rejection of broad claims and Beach's acquiescence in the rejection; and note Patent Office requirements of Sept. 3, 1886, p. 247; of Nov. 16, 1886, pp. 248, 249; of Jan. 28, 1887, p. 252, and note also Beach's acquiescence of Nov. 23, 1886, p. 250.

Judge Putnam held that your petitioners, the defendants at the Circuit, had not infringed either the first, second, or third claims of Beach's patent, because petitioners' feeding mechanism was not the same or substantially the same as Beach's feed mechanism, and this your petitioners represent to be the fact. Judge Putnam held that your petitioners had infringed the sixth claim of Beach's patent.

A motion by Beach for rehearing was denied by Putnam, J.

See 82 Fed. Rep., 928.

Tenth. On cross-appeals from said decision of Putnam, J., the Circuit Court of Appeals for the First Circuit reversed the decision below, holding—

(1) That your petitioners' "feeding mechanism * * * is a mechanical equivalent for the feeding mechanism of the complainant, since it was well known as a proper substitute for the one described in the complainant's specification at the date of his patent"; and

(2) That it would be giving too broad a construction to the Beach patent to hold [as held by the Circuit Court of Appeals for the Second Circuit] that it covered every combination of clamping dies, feeding, pasting, and cutting mechanism which accomplished the same result, but it should be held to cover a combination of these elements or their known equivalents at the date of the patent."

See Certified Record, pp. 670, 671, and 672.

Eleventh. Your petitioners represent that they are now under injunction and debarred from operating under the Horton patent which was granted (without any interference with Beach's said applications or patents) prior to the grant of Beach's original patent, and the Circuit

Court of Appeals for the First Circuit has done petitioners a grievous wrong in holding, contrary to the facts disclosed by the record in the case, that your petitioners' feeding mechanism was a known substitute for Beach's feeding mechanism at the date of Beach's said patent.

Your petitioners represent it to be a fact that the record now sought to be brought up to this Court does not show that petitioners' specific feeding mechanism or that any feeding mechanism substantially like it, either in construction, or in mode of operation, or in result, was known or existed at the date of Beach's patent, except only in said Horton patent and machines made by Horton thereunder.

And your petitioners further represent that it is a fact that said record fully and clearly shows that petitioners' feeding mechanism is a wholly new kind of intermittent feed, in construction, mode of operation, and result; and that your petitioners' feeding mechanism is substantially unlike and different from Beach's feeding mechanism in principle, construction, mode of operation, and result; and that its novel and distinguishing characteristic lies in the fact, proven and not disputed in said record, that the movable member of petitioners' cutting mechanism is an essential element of petitioners' feeding mechanism.

The radical error of the Circuit Court of Appeals for the First Circuit upon this proposition of fact (whereby it found that petitioners had infringed said first, second, and third claims) arose, as petitioners represent, from the really inconsequential fact that Beach's feed is a "side-feed," while in some of the numerous interferences in which Beach's original application was involved in the Patent Office the interfering machines had "back-feeds."

Petitioner's machine has a "back-feed," but there is

no evidence whatever in said record that it is a kind of back-feed which was known prior to Beach's invention, or known prior to Beach's patent, except from the disclosures of Horton and the Horton patent.

The Court of Appeals for the First Circuit states (92 Fed. Rep., 150): "The back-feed is shown in the Knowlton machine"—(of Knowlton's patent dated March 10, 1891, the application for which was put into interference with Beach; see Certified Record, p. 592, for Knowlton patent, and page 259 for declaration of Knowlton-Beach interference) and the Patent Office decided that it was covered by the Beach invention. However this may be, it can not be questioned that the back-feed was a known equivalent for the side-feed at the date of the Beach patent."

Petitioners represent that petitioners' kind of back-feed is shown by the record to be not only substantially unlike any and all back-feeds known prior to Horton's disclosure thereof, but also to be incapable of operative substitution in box-corner staying machines for Beach's feeding mechanism; and that the Court of Appeals for the First Circuit disregarded each and every one of these facts, clearly proven by the record, that—

(1) petitioners' Horton specific back-feed was affirmatively shown to be non-existent at the date of Beach's invention, so far as affirmative proof is possible on such a question;

(2) that there was no proof whatever tending to negative said affirmative proof;

(3) that there was no proof in the record that petitioners' Horton feed was known at the date of Beach's invention, or known at the date of Beach's original patent, except from disclosures of Horton while he was

building the machine forming the subject-matter of said Horton patent, or from the Horton patent itself;

(4) that it is shown by the record that said Horton feed is incapable of operative substitution (in box-corner staying machines constructed in accordance with Beach's patent) for the feeding mechanism thereof; and

(5) that if the Horton feed were, in fact, so reorganized as to be, in fact, contained in a machine such as described in the Beach patent, the machine so constructed would be inoperative and worthless.

Twelfth. Your petitioners further represent that under the rule of law enunciated by the Court of Appeals for the First Circuit in said cause, it is manifestly open to petitioners to proceed with the manufacture of box-corner staying machines containing the combination of a pasting mechanism, a feeding mechanism, and a severing mechanism with dies having diverging working faces, provided in such machines petitioners do not employ any one of Beach's particular elements or obvious or known substitutes therefor. In other words, under the rule laid down by the Court of Appeals for the First Circuit, it is open to petitioners to lawfully make, use, and sell, in the First Circuit, box-corner staying machines containing some combinations of clamping dies, feeding, pasting, and cutting mechanisms, for the Court expressly says (92 Fed Rep., 151):

"It would be giving too broad a construction to the Beach patent to hold that it covered *every* combination of clamping dies, feeding, pasting, and cutting mechanism which accomplished the same result."

Contrariwise, the machines so lawfully made, used, and sold in the First Circuit would be liable to injunction in the Second Circuit, because the rule of law

enunciated there by the Court of Appeals for the Second Circuit is that Beach's

"first three claims are broad ones, covering the particular combinations referred to without any restriction to the details of mechanical construction," and that "Beach was entitled to appropriate as broad a combination as he has set forth in his first three claims, which cover every device for affixing stay-strips to the outside of box corners when the operation is performed by the combined action of a feeding mechanism, a cutting mechanism, and a pasting mechanism in combination with any opposing clamping dies whose faces diverge." (71 Fed. Rep., 423.)

Petitioners represent that by reason of this diversity of decisions of said Courts of Appeal for the First and Second Circuits they are unjustly hindered and injured in their said business and are likely to remain so during the remainder of the term of the Beach patent—that is, until its expiration on February 24, 1908; and that said diversity of opinion makes petitioners uncertain whether they can safely sell or dispose of such box-corner staying machines as they may so lawfully make in the First Circuit, in judicial circuits outside of said First and Second Circuits, for the reason that it must remain unknown to them which interpretation of Beach's first, second, and third claims the courts of such other circuits will follow—that of said First Circuit or that of said Second Circuit.

Thirteenth. Petitioners further say that they have sold or otherwise disposed of sundry box-corner staying machines in divers places within said Second Circuit, which said machines petitioners believe they can so alter over as to escape a charge of infringement of said first three claims, if the decision of the Court of Appeals for the First Circuit be controlling of the question, but

which they believe and are advised would be held as infringements by courts having jurisdiction within the Second Circuit by reason of said decision of said Court of Appeals for the Second Circuit.

Fourteenth. Petitioners further represent that it is a fact that they manufactured and sold their said machines held as aforesaid to infringe the first, second, and third claims of Beach's patent because of their reliance upon the limitations imposed by the Commissioner of Patents and accepted by Beach as stated by Judge Putnam in his said decision, and their belief that the law of the land made such limitations binding upon the Beach patent in spite of the alleged fact that Beach was the first to produce a machine for applying the old hand applied stay strips to the corners of boxes.

Fifteenth. Touching the first claim of the Beach patent, petitioners say that it is a fact proved by the record that petitioners' machine held an infringement as aforesaid of Beach's said 1st, 2d, 3d, and 6th claims, was not capable of applying stay-pieces to interposed box corners except by severing the stay pieces one by one from a stay strip intermittently fed over the box corner between the pressing dies; and that Beach's first claim omits a severing mechanism as an element and is for a combination of mechanisms for applying separate stay pieces previously cut from a stay strip—that is, from a long piece of cloth or muslin adapted to be cut into small pieces to be stuck over the outside of box corners; and that the exhibit file wrapper and contents of Beach's original patent contains in Beach's substitute specification of November 7, 1890, the following matter:

"In place of a strip feeding device operating to carry a continuous strip to the clamping dies, such as herein

shown, a feeding device may be employed which is constructed to deliver to the box corners placed between the clamping dies a series of separate stay strips previously cut to the proper shape, without departure from my invention."

On December 26, 1890, the Commissioner of Patents required this paragraph to be erased on the ground that it embodied—

"new matter which does not conform with either the drawings or specification as they were at the time of filing the application, and must therefore be erased."

Beach erased the matter. Beach testified that a knife in the hands of the operator and used to sever the stay pieces from the continuous stay strip would be the equivalent of the omitted severing mechanism.

See Certified Record, p. 268, for erased description of separate stay pieces, and p. 271 for Commissioner's rejection thereof.

See Beach's cross-ans. 39 and 40, p. 103, for proposition that a jack-knife in the hand of an attendant is the equivalent of the severing mechanism of the patent.

Sixteenth. All of petitioners' machines held as infringements as aforesaid contained a pasting mechanism and were incapable of operation without a pasting mechanism. Beach's second claim contains no pasting mechanism as an element and to be practically operative requires the use of a sponge in the hand of an attendant.

Seventeenth. Beach's third claim is the only claim in his patent that sets forth all the elements found in petitioners' enjoined machines.

Eighteenth. Petitioners represent that Beach was not the first to apply, by means of an automatic mechanism,

pasted stay-strips upon interposed box-corners, and represent that such work was done by the machines illustrated and described in the C. A. Maxfield Patent No. 52,432 of February 6th, 1866, and in the S. B. Terry Patent No. 25,373 of September 6th, 1859, all of which fully appears from the record sought to be brought up.

See Defendants' Exhibit Maxfield Patent, p. 525.

See Defendants' Exhibit Terry Patent, p. 531.

Nineteenth. Petitioners humbly pray this Honorable Court to consider whether any patentable invention is involved in said claims 1, 2, 3, and 6 of said Beach reissue; and represent that the record now sought to be brought up shows—

I. Beach did not claim, when he first filed his original application, the subject-matter of any of said claims, but limited his claims to mechanisms adapted to apply the severed stay-pieces without, across, and within the box-corner, as illustrated in Fig. 9 of his original and reissue patents, which mechanisms were not adapted to apply the stay-pieces on the outside only of the box-corners, as is the case with all of petitioners' prior Horton patent machines held as infringements.

See Defendants' Exhibit Beach File Wrapper, etc., p. 244.

II. Beach's original attorney was R. F. Osgood.

See Defendants' Exhibit Beach File Wrapper, etc., p. 241.

III. The use of work supports and co-operating plungers, each having diverging working faces, was old in box-corner staying machines.

See Cohn's patent for "Machine for Inserting Corner-Clasps of Boxes," No. 148,416, of March 10,

1874; also, Haddan's British patent for "Improvements in Wire-Stitching Machines, or Machines for Binding Books and Similar Objects with Metallic Staples."

Defendants' Exhibit Cohn Patent, p. 453.

Defendants' Exhibit Haddan Patent, p. 511.

IV. In the prior Newspaper Addressing Machine patent of C. T. Welch, No. 236,387, of January 4, 1881, which appears on its face to have been solicited by Beach's subsequent and original attorney, R. F. Osgood, there appears Beach's subsequently-claimed combinations of said claims 1, 2, and 3 (excepting merely the diverging faces of the co-operating dies), to wit, the combination of—

(1) an intermittent, strip-feeding mechanism,—K, L;

(2) a strip pasting mechanism,—N, O, P, Q;

(3) an intermittent, strip-severing mechanism,—*c*, *d*;

(4) a reciprocating flat-faced die or plunger,—*f*;

(5) a work-support *X* adapted to be "held stationary for the purpose of labeling separate papers when desired."

See Defendants' Exhibit Welch patent No. 236,387, p. 537, and note the statement at the bottom of p. 2 and top of p. 3 of its specification that the follower *X* may be held stationary by described mechanism.

See Brevoort (Complainants' expert), Ans. 11, p. 237.

Twentieth. Touching the question of invention in said 6th claim, your petitioners humbly pray this Honorable Court to note that Beach's original claims did not contain the subject-matter of said 6th claim, and that "clamping dies constructed to act with an elastic or

yielding pressure" upon whatever is to be operated upon by the dies are shown in the following prior patents:

Defendant's Exhibit Cohn Patent, p. 453.

Defendant's Exhibit Gates Patent, p. 433.

Twenty-first. Petitioners further represent to this Honorable Court that said record shows that Beach had some knowledge of said Horton patent machine in the winter or spring of 1890, Beach then informing Horton that "a staying machine could not be constructed that would not infringe his (Beach's) patent," although Beach had not then obtained his patent.

Horton, Ans. 70, p. 40.

The first Horton machine was completed and put into actual use in Reading, Mass., as early as September 23, 1889, and was publicly shown to box makers.

Horton, Ans. 2, p. 30; 10–17, pp. 31, 32; 54–58, pp. 38–39; 70, p. 40.

Twenty-second. Petitioners further represent that said record discloses that Beach on November 7, 1890, avowedly enlarged his claims "to cover other machines which have been devised since applicant made his invention, and which differ only in details of construction from his machine."

See Defendants' Exhibit Beach File Wrapper, etc., p. 271, where the quotation occurs at the end of attorney's "remarks."

Twenty-third. Petitioners further represent and aver that the record now sought to be brought up does not show whether said Beach or said Horton was the first to conceive, or the first to disclose to others, or the first to make a model of a machine for automatically affixing pasted stay-pieces to box-corners; and petitioners represent that the utmost said record shows upon the question of prior inventorship is that Beach was the first to perfect such a

machine, as regards Horton, and was the first to file an application for letters patent thereon, while Horton, as regards Beach, was the second to apply and the first to obtain letters patent.

See Deposition of Horton, pp. 29–46.

See Deposition of Beach, pp. 96–107; pp. 200–207.

Wherefore your petitioners pray:—

That this Honorable Court will be pleased to grant a *writ of certiorari* requiring the cross-appeal case above referred to of Fred H. Beach *v.* Clarence W. Hobbs *et al.*, and Clarence W. Hobbs *et al. v.* Fred H. Beach to be certified to this Honorable Court for its review and determination.

SAMUEL T. FISHER,
Solicitor for Petitioners.

STATE OF MASSACHUSETTS, }
County of Worcester, } *ss.*

Clarence W. Hobbs, being duly sworn, deposes and says: I am one of the above-named petitioners, and have read the foregoing petition; the same is true of my own knowledge, except as to those matters which are stated upon information and belief, and as to those matters, I believe it to be true.

CLARENCE W. HOBBS.

Subscribed and sworn to before me this 7th day of September, 1899.

[SEAL.]

EDWARD S. BEACH,
Notary Public.

I hereby certify that I have examined the foregoing petition, and that, in my opinion, the petition is well founded, and the case is one in which the prayer of the petitioners should be granted by this court.

SAMUEL T. FISHER,
Of Counsel for Petitioners.